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9 Attorneys for Defendant
10 Bodycote Thermal Processing, Inc.

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 ORANGE COUNTY COASTKEEPER,
14 a California nonprofit corporation,

15 Plaintiff,

16 v.

17 BODYCOTE THERMAL
18 PROCESSING, INC., a Delaware
19 corporation,

20 Defendant.
21

Case No.: 8:22-cv-02040 KK (DFMx)

[Assigned to Hon. Kenly Kiya Kato,
District Judge, and Hon. Douglas F.
McCormick, Magistrate Judge]

DISCOVERY DOCUMENT:
REFERRED TO MAGISTRATE
JUDGE DOUGLAS F. MCCORMICK

**STIPULATED PROTECTIVE
ORDER**

22 **I. PURPOSES AND LIMITATIONS**

23 Disclosure and discovery activity in this action are likely to involve production
24 of confidential, proprietary, or private information for which special protection from
25 public disclosure and from use for any purpose other than prosecuting this litigation
26 may be warranted. Accordingly, the parties hereby stipulate to and petition the Court
27 to enter the following Stipulated Protective Order. The parties acknowledge that this
28

1 Order does not confer blanket protections on all disclosures or responses to discovery
2 and that the protection it affords from public disclosure and use extends only to the
3 limited information or items that are entitled to confidential treatment under the
4 applicable legal principles. The parties further acknowledge, as set forth in Section
5 XIII(C), below, that this Stipulated Protective Order does not entitle them to file
6 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
7 that must be followed and the standards that will be applied when a party seeks
8 permission from the Court to file material under seal.

9 **II. GOOD CAUSE STATEMENT**

10 This action is likely to involve internally developed policies and procedures,
11 confidential logs and business records, customer personal information and other
12 valuable commercial, financial, technical and/or proprietary information for which
13 special protection from public disclosure and from use for any purpose other than
14 prosecution of this action is warranted. Such confidential and proprietary materials
15 and information consist of, among other things, confidential business or financial
16 information or commercial information (including information implicating privacy
17 rights of third parties), information otherwise generally unavailable to the public, or
18 which may be privileged or otherwise protected from disclosure under state or federal
19 statutes, court rules, case decisions, or common law. Such information and documents
20 include business records or information involving private or personal information of
21 the parties or third parties; and/or documents marked confidential and not made
22 available for the public at large. Accordingly, to expedite the flow of information, to
23 facilitate the prompt resolution of disputes over confidentiality of discovery materials,
24 to adequately protect information the parties are entitled to keep confidential, to ensure
25 that the parties are permitted reasonable necessary uses of such material in preparation
26 for and in the conduct of trial, to address their handling at the end of the litigation, and
27 serve the ends of justice, a protective order for such information is justified in this
28 matter. It is the intent of the parties that information will not be designated as

1 confidential for tactical reasons and that nothing be so designated without a good faith
 2 belief that it has been maintained in a confidential, non-public manner, and there is
 3 good cause why it should not be part of the public record of this case.

4 **III. DEFINITIONS**

5 A. Action: *Orange County Coastkeeper v. Bodycote Thermal Processing,*
 6 *Inc.*, Case No. 8:22-cv-02021 KK(DFMx), filed in the United States District
 7 Court for the Central District of California.

8 B. Challenging Party: A Party or Non-Party that challenges the designation
 9 of information or items under this Order.

10 C. “CONFIDENTIAL” Information or Items: Information (regardless of
 11 how it is generated, stored or maintained) or tangible things that qualify for
 12 protection under Federal Rule of Civil Procedure 26(c), and as specified above
 13 in the Good Cause Statement.

14 D. Counsel: Outside Counsel of Record and House Counsel (as well as their
 15 support staff).

16 E. Designating Party: A Party or Non-Party that designates information or
 17 items that it produces in disclosures or in responses to discovery as
 18 “CONFIDENTIAL.”

19 F. Disclosure or Discovery Material: All items or information, regardless of
 20 the medium or manner in which it is generated, stored, or maintained (including,
 21 among other things, testimony, transcripts, and tangible things), that are
 22 produced or generated in disclosures or responses to discovery in this matter.

23 G. Expert: A person with specialized knowledge or experience in a matter
 24 pertinent to the litigation who has been retained by a Party or its counsel to serve
 25 as an expert witness or as a consultant in this Action.

26 H. House Counsel: Attorneys who are employees of a party to this Action.
 27 House Counsel does not include Outside Counsel of Record or any other outside
 28 counsel.

I. Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

J. Outside Counsel of Record: Attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and includes support staff.

K. Party: Any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

L. Producing Party: A Party or Non-Party that produces Confidential Disclosure or Discovery Material in this Action.

M. Professional Vendors: Persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

N. Protected Material: Any Disclosure or Discovery Material that is designated as "CONFIDENTIAL."

O. Receiving Party: A Party that receives Confidential Disclosure or Discovery Material from a Producing Party.

P. Court: Hon. Kenly Kato, Magistrate Judge Douglas F. McCormick, or any other judge to which this Action may be assigned, including Court staff participating in such proceedings.

IV. SCOPE

A. The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

1 However, the protections conferred by this Stipulation and Order do not cover
2 the following information: (a) any information that is in the public domain at the
3 time of disclosure to a Receiving Party or becomes part of the public domain
4 after its disclosure to a Receiving Party as a result of publication not involving
5 a violation of this Order, including becoming part of the public record through
6 trial or otherwise; and (b) any information known to the Receiving Party prior
7 to the disclosure or obtained by the Receiving Party after the disclosure from a
8 source who obtained the information lawfully and under no obligation of
9 confidentiality to the Designating Party.

10 B. To the extent that a Party – including any third party or Non-Party that
11 produces documents in response to a discovery request, subpoena, or Court order
12 in this Action – produces account records of Defendant’s customers, those
13 records may be produced as “CONFIDENTIAL.” Such production is deemed by
14 the Court to fall within the exceptions set forth in 15 U.S.C. § 6802(e)(2),(3),
15 and (8) of the Gramm-Leach-Bliley Act.

16 C. Any use of Protected Material at trial shall be governed by the orders of the
17 trial judge. This Order does not govern the use of Protected Material at trial.

18 **V. DURATION**

19 Even after final disposition of this litigation, the confidentiality obligations
20 imposed by this Order shall remain in effect until a Designating Party agrees
21 otherwise in writing or a court order otherwise directs. Final disposition shall
22 be deemed to be the later of (1) dismissal of all claims and defenses in this
23 Action, with or without prejudice; and (2) final judgment herein after the
24 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews
25 of this Action, including the time limits for filing any motions or applications
26 for extension of time pursuant to applicable law.
27
28

VI. DESIGNATING PROTECTED MATERIAL

A. Exercise of Restraint and Care in Designating Material for Protection

1. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

2. Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

3. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

B. Manner and Timing of Designations

1. Except as otherwise provided in this Order (*see, e.g.*, Section B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

2. Designation in conformity with this Order requires the following:

a. For information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix

1 at a minimum, the legend “CONFIDENTIAL” (hereinafter
2 “CONFIDENTIAL legend”), to each page that contains protected
3 material. If only a portion or portions of the material on a page
4 qualifies for protection, the Producing Party also must clearly
5 identify the protected portion(s) (e.g., by making appropriate
6 markings in the margins).

7 b. If only a portion or portions of the material on a page
8 qualifies for protection, the Producing Party also must clearly
9 identify the protected portion(s) (e.g., by making appropriate
10 markings in the margins).

11 c. Extremely sensitive and/or proprietary
12 “CONFIDENTIAL” information or items, the disclosure of
13 which to another Party or Non-Party would create a substantial
14 risk of serious harm that could not be avoided by less restrictive
15 means, may be designated “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY”.

17 d. For testimony given in depositions or in other pretrial or
18 trial proceedings, that the Designating Party identify the
19 Disclosure or Discovery Material on the record, before the close
20 of the deposition, hearing, or other proceeding, all protected
21 testimony.

22 e. For information produced in form other than document and
23 for any other tangible items, that the Producing Party affix in a
24 prominent place on the exterior of the container or containers in
25 which the information is stored the legend “CONFIDENTIAL.”
26 If only a portion or portions of the information warrants
27 protection, the Producing Party, to the extent practicable, shall
28 identify the protected portion(s).

C. Inadvertent Failure to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS

A. Timing of Challenges. Any party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

B. Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

C. Burden of Persuasion. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

VIII. ACCESS TO AND USE OF PROTECTED MATERIAL

A. Basic Principles

1. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the

1 Action has been terminated, a Receiving Party must comply with the
2 provisions of Section XIV below.

3 2. Protected Material must be stored and maintained by a Receiving
4 Party at a location and in a secure manner that ensures that access is
5 limited to the persons authorized under this Order.

6 B. Disclosure of “CONFIDENTIAL” Information or Items

7 1. Unless otherwise ordered by the Court or permitted in writing by
8 the Designating Party, a Receiving Party may disclose any information or
9 item designated “CONFIDENTIAL” only to:

10 a. The Receiving Party’s Outside Counsel of Record in this
11 Action, as well as employees of said Outside Counsel of Record
12 to whom it is reasonably necessary to disclose the information for
13 this Action;

14 b. The officers, directors, and employees (including House
15 Counsel) of the Receiving Party to whom disclosure is reasonably
16 necessary for this Action, except that disclosure of “HIGHLY
17 CONFIDENTIAL – ATTORNEYS EYES ONLY” information
18 or items may not be made to such persons other than House
19 Counsel;

20 c. Experts (as defined in this Order) of the Receiving Party to
21 whom disclosure is reasonably necessary for this Action and who
22 have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A);

24 d. The Court and its personnel;

25 e. Court reporters and their staff;

26 f. Professional jury or trial consultants, mock jurors, and
27 Professional Vendors to whom disclosure is reasonably necessary
28

1 for this Action and who have signed the “Acknowledgment and
2 Agreement to be Bound” attached as Exhibit A hereto;

3 g. The author or recipient of a document containing the
4 information or a custodian or other person who otherwise
5 possessed or knew the information;

6 h. During their depositions, witnesses, and attorneys for
7 witnesses, in the Action to whom disclosure is reasonably
8 necessary provided: (i) the deposing party requests that the
9 witness sign the “Acknowledgment and Agreement to Be
10 Bound;” and (ii) they will not be permitted to keep any
11 confidential information unless they sign the “Acknowledgment
12 and Agreement to Be Bound,” unless otherwise agreed by the
13 Designating Party or ordered by the Court. Pages of transcribed
14 deposition testimony or exhibits to depositions that reveal
15 Protected Material may be separately bound by the court reporter
16 and may not be disclosed to anyone except as permitted under this
17 Stipulated Protective Order; and

18 i. Any mediator or settlement officer, and their supporting
19 personnel, mutually agreed upon by any of the parties engaged in
20 settlement discussions.

21 C. Counsel for any Party providing any Protected Material to a person
22 signing the “Acknowledgment and Agreement to Be Bound” shall be named
23 in the “Acknowledgement and Agreement to Be Bound” as the California
24 agent of the person signing the “Acknowledgement and Agreement to Be
25 Bound” for service of process in connection with this action or any proceedings
26 related to enforcement of this Stipulated Protective Order, and shall not
27 provide Protected Material to such person until such Counsel has received a
28 signed “Acknowledgment and Agreement to Be Bound” from such person,

1 shall maintain a copy of any such “Acknowledgment and Agreement to Be
 2 Bound” until the final disposition of the Action, and, upon the final disposition
 3 of the Action shall provide a copy of any such “Acknowledgment and
 4 Agreement to Be Bound” to Counsel for the Party whose Protected Material
 5 was disseminated.

6 **IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
 7 **PRODUCED IN OTHER LITIGATION**

8 A. If a Party is served with a subpoena or a court order issued in other
 9 litigation that compels disclosure of any information or items designated in this
 10 Action as “CONFIDENTIAL,” that Party must:

- 11 1. Promptly notify in writing the Designating Party. Such notification
 12 shall include a copy of the subpoena or court order;
- 13 2. Promptly notify in writing the party who caused the subpoena or
 14 order to issue in the other litigation that some or all of the material covered
 15 by the subpoena or order is subject to this Protective Order. Such
 16 notification shall include a copy of this Stipulated Protective Order; and
- 17 3. Cooperate with respect to all reasonable procedures sought to be
 18 pursued by the Designating Party whose Protected Material may be
 19 affected.

20 B. If the Designating Party timely seeks a protective order, the Party served
 21 with the subpoena or court order shall not produce any information designated
 22 in this action as “CONFIDENTIAL” before a determination by the Court from
 23 which the subpoena or order issued, unless the Party has obtained the
 24 Designating Party’s permission. The Designating Party shall bear the burden
 25 and expense of seeking protection in that court of its confidential material and
 26 nothing in these provisions should be construed as authorizing or encouraging a
 27 Receiving Party in this Action to disobey a lawful directive from another court.
 28

X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

A. The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

B. In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. Promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
2. Promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and
3. Make the information requested available for inspection by the Non-Party, if requested.

C. If the Non-Party fails to seek a protective order from this Court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (1) notify in writing the Designating Party of the unauthorized disclosures, (2) use its best efforts to retrieve all unauthorized copies of the Protected Material, (3) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (4) request such person or persons to execute the “Acknowledgment and Agreement to be Bound” that is attached hereto as Exhibit A.

XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the Stipulated Protective Order submitted to the Court.

XIII. MISCELLANEOUS

A. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

B. Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object

1 on any ground to use in evidence of any of the material covered by this Protective
2 Order.

3 C. Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5. Protected Material
5 may only be filed under seal pursuant to a court order authorizing the sealing of
6 the specific Protected Material at issue. If a Party's request to file Protected
7 Material under seal is denied by the Court, then the Receiving Party may file the
8 information in the public record unless otherwise instructed by the Court.

9 **XIV. FINAL DISPOSITION**

10 A. After the final disposition of this Action, as defined in Section V
11 (DURATION), within sixty (60) days of a written request by the Designating
12 Party, each Receiving Party must return all Protected Material to the Producing
13 Party or destroy such material. As used in this subdivision, "all Protected
14 Material" includes all copies, abstracts, compilations, summaries, and any other
15 format reproducing or capturing any of the Protected Material. Whether the
16 Protected Material is returned or destroyed, the Receiving Party must submit a
17 written certification to the Producing Party (and, if not the same person or entity,
18 to the Designating Party) by the 60-day deadline that (1) affirms all Protected
19 Material was returned or destroyed and (2) affirms that the Receiving Party has
20 not retained any copies, abstracts, compilations, summaries or any other format
21 reproducing or capturing any of the Protected Material. Notwithstanding this
22 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
23 papers, trial, deposition, and hearing transcripts, legal memoranda,
24 correspondence, deposition and trial exhibits, expert reports, attorney work
25 product, and consultant and expert work product, even if such materials contain
26 Protected Material. Any such archival copies that contain or constitute Protected
27
28

1 Material remain subject to this Protective Order as set forth in Section V
2 (DURATION).

3 B. Any violation of this Order may be punished by any and all appropriate
4 measures including, without limitation, contempt proceedings and/or monetary
5 sanctions.

6 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

7
8 Dated: January 24, 2024

/s/ Rebecca L. Davis (Authorized 1/23/24)
Attorney(s) for Plaintiff Orange County
Coastkeeper

11
12 Dated: January 24, 2024

/s/ Reed C. Randel
Attorney for Defendant Bodycote Thermal
Processing, Inc.

14
15 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

16
17 Dated: January 25, 2024



Hon. Douglas F. McCormick
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 _____ [print or type full address], declare under
 penalty of perjury that I have read in its entirety and understand the Stipulated
 Protective Order that was issued by the United States District Court for the Central
 District of California on [DATE] in the case of *Orange County Coastkeeper v.*
Bodycote Thermal Processing, Inc., Case No. 8:22-cv-02021 KK(DFMx). I agree to
 comply with and to be bound by all the terms of this Stipulated Protective Order and I
 understand and acknowledge that failure to so comply could expose me to sanctions
 and punishment in the nature of contempt. I solemnly promise that I will not disclose
 in any manner any information or item that is subject to this Stipulated Protective Order
 to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print or
 type full name] of _____ [print or type
 full address and telephone number] as my California agent for service of process in
 connection with this action or any proceedings related to enforcement of this Stipulated
 Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____